

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 290 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SURESH SOMA @ DULO HARIJAN

Versus

STATE OF GUJARAT

Appearance:

MR BHARDA WITH MS SUBHADRA G PATEL for Petitioner
MR HH PATEL, AGP, for respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/12/1999

ORAL JUDGEMENT

#. The petitioner is an externee, who has been externed out of the territories of districts of Porbandar, Junagadh, Amreli, Rajkot City and Rajkot (Rural), by virtue of an order passed by Sub-Divisional Magistrate, Junagadh, on 24th April, 1998 for a period of two years, in exercise of powers under Section 56(b) of the Bombay Police Act, 1951.

#. The petitioner was issued a notice as required

under Section 59 of the Bombay Police Act on 9th February, 1998. The allegations were that he was involved in following offences :-

SNo. Police Station C.R. No./Section Disposal

01 Junagadh City 175/95 P.T.

IPC 324, 147, 148,
149 and Bombay Police
Act 135

02 -do- 217/95 P.T.

IPC 327, 143, 147,
148, 149, 504 and
B.P.A. 135
Dt. 19.5.95

03 -do- 500/96 P.T.

IPC 395, 435, 506(2)
and 114 Dt.19.12.96

04 -do- C.C. No.2/97 Discharged

Cr.P.C. 110-EH.

05 A Div. 255/97 P.T.

IPC 223, 504, 114
B.P.A.135
Dt. 17/9/97

06 -do- 260/97 P.T.

B.P. Act 135
Dt. 20/9/97

The externing authority stated in the notice that the witnesses to the nefarious activities of the petitioner are not prepared to depose against him in public out of fear from him as to their person and property. In order to prevent him from continuing his nefarious activities, he is required to be externed not only from Junagadh district, but also from adjoining districts, so that he cannot continue his activities.

2.1 After the above notice, externment proceedings were initiated and an order came to be passed on 24th April, 1998 externing the petitioner for a period of two years from the above stated districts. The externing authority took into consideration the following offences registered against the petitioner:

SNo. Police Station C.R. No./Section Disposal

01 Junagadh City 175/95 P.T.

IPC 324, 147, 148,
149 and Bombay Police
Act 135

02 -do- 217/95 P.T.

IPC 327, 143, 147,
148, 149, 504 and
B.P.A. 135
Dt. 19.5.95

03 -do- 500/96 P.T.

IPC 395, 435, 506(2)
and 114 Dt.19.12.96

04 A Div. 255/97 P.T.

Junagadh IPC 223, 504, 114
B.P.A.135
Dt. 17/9/97

05 -do- 260/97 P.T.

B.P. Act 135
Dt. 20/9/97

2.2 The externing authority also took into consideration an offence registered with Junagadh "A" Division Police Station vide C.R. No.II 143/97 for the offences punishable under Sections 323, 504 and 506(2) of I.P.C. and Section 135 of the Bombay Police Act, the information of which was received by the externing authority by post from Police Inspector, Junagadh "A" Division Police Station, vide letter dated 24th March, 1998.

2.3 After recording the subjective satisfaction, the externing authority came to conclusion that in order to prevent the petitioner from continuing his nefarious activities, he is required to be externed and the order came to be passed.

#. The petitioner has approached this Court with this petition under Article 226 of the Constitution to challenge the above externment order. The main grounds is that clause (a) or (b) of Section 56 of the Bombay Police Act cannot be made applicable to the facts of the present case.

3.1 Mr. Bharda, in order to substantiate this contention, has drawn attention of this Court to the fact that the externing authority, both in the notice as well as in the order, has placed reliance on an offence registered vide 'A' Division Police Station, Junagadh, at C.R. No.II 260/97 for an offence under the Bombay Police Act, 135. He has drawn attention of the Court to Section 56, clause (b) of the Bombay Police Act, which refers to offences punishable under Chapter XII, XVI and XVII of the Indian Penal Code and, therefore, cannot attract provisions of Section 56 clause (b) of the Bombay Police Act. Mr. Bharda also submitted that the externing authority has relied upon a case which was not referred to in the notice under Section 59, that case being Junagadh "A" Division Police Station C.R. No.II-143/97, which is referred to in the order of externment in the paragraph following the tabulated details of the offences. There is, therefore, non-compliance of Section 59 of the Bombay Police Act in respect of that case.

#. Mr. H.H. Patel, learned Addl. Public Prosecutor, has opposed this petition. He tried to justify the notice and the order and the lacunas therein by stating that the petitioner's activities are established by the five offences registered against him and considered while passing the order. The authority has recorded subjective satisfaction and the Court may not interfere in the order, on the sufficiency or insufficiency of material.

#. Having regard to the rival side contentions and considering the scheme of the Act, it transpires that before passing any order of externment under Section 56, the externing authority is required to issue a notice to the proposed externnee under Section 59 of the Bombay Police Act. The externing authority has issued a notice as required under Section 56. This provisions of law is made with a view to enable the proposed externnee to meet with the allegations against him, which are considered requisite/sufficient by the externing authority for passing an order of externment. The notice, therefore, has to be specific and in detail. It is settled proposition of law that a ground which is not stated in the notice issued under Section 59, cannot be considered while passing the order by the authority and if it is so done, it would be non-compliance of Section 59 and would vitiate the externment order. This is with a view that the person to be externed must have an opportunity, in true sense and spirit, to meet with and explain why order should not be passed against him on the grounds which are brought to his notice in the notice. If any of the

grounds which is considered by the external authority while passing the order is not put to the proposed external in the notice, it can be said that his right under Section 59 is infringed. In this view of the matter, the petition deserves to be allowed only on the ground that the external authority has taken into consideration offences registered with Junagadh "A" Division Police Station vide C.R. No.II 143/97, which were not put to the petitioner in the notice.

#. Mr. Bharda, learned advocate for the petitioner does not press for a verdict on other contentions raised on behalf of the external.

#. In view of the above discussion, the petition is allowed. The order of externalment dated 24th April, 1998, passed by the Sub-Divisional Magistrate, Junagadh (Annexure-B) is hereby quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]

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